

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE
LITIGATION

THIS DOCUMENT RELATES TO:
ASTRAZENECA MASSACHUSETTS
AND NON-MASSACHUSETTS CLASS 2
AND CLASS 3 SETTLEMENTS

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**PLAINTIFFS' MOTION FOR DISTRIBUTION OF THE NET SETTLEMENT
FUND TO CONSUMER CLAIMANTS AND THIRD-PARTY PAYORS
IN THE BMS SETTLEMENT**

1. Class Plaintiffs hereby move for entry of an Order to disburse funds to all eligible consumer and Third Party Payor ("TPP") claimants in the settlement with Defendant Bristol-Myers Squibb ("BMS"). Class Counsel has conferred with counsel for BMS, who do not oppose this motion but who wish it noted that BMS has no knowledge of or involvement in the Claims Administration process. In support, thereof, Class Plaintiffs state as follows:

2. On July 19, 2011, the Court granted final approval to the class action settlement embodied in the parties' Settlement Agreement and Release of the BMS Group (Dkt. No. 7674).

3. No appeals were taken from the Court's order. As such, the Settlement Agreement became effective as of August 19, 2011.

4. The Court appointed Rust Consulting, Inc. ("Rust") as the Claims Administrator with responsibilities for implementing the distribution of the settlement proceeds. Immediately after the effective date of the Settlement Agreement, Rust began processing all claims of would-be Class members. As set forth in the Declaration of Daniel Coggeshall Regarding Allocation

and Distribution of the Net Settlement Fund to Class 1 and Class 3 Consumers and Class 2 and Class 3 Third Party Payors, attached hereto as Exhibit A (the “Coggeshall Decl.”), Rust has now completed its review and processing of all class claims and stands ready to distribute the net settlement proceeds to all consumer and Third Party Payor Class members.

A. Consumer Class 1 Claims Processing

5. The Claims Administrator has calculated the Recognized Claim Amount for eligible consumer Class 1 claimants as follows:

a. ***Eligible Consumer Claims.*** Rust received a total of 18,057 Class 1 claims in the Settlement, of which 14,804 were deemed eligible. Coggeshall Decl, ¶ 9. These eligible claims have a total Recognized Claim Amount of \$2,850,473.86. *Id.*, ¶ 18. This figure includes 1,354 claims that were received after the claim deadline but are otherwise eligible. *Id.*, ¶ 18. Class Counsel recommend that the Court approve each of the eligible consumer claims, including those that were late.

b. ***Ineligible or Deficient Consumer Claims.*** Rust sent more than 9,026 letters to Class 1 consumer claimants in an attempt to clarify information provided by the consumer or to request that they take action to resolve a deficient or ineligible condition in their claim. Coggeshall Decl, ¶¶ 13-16. Despite these efforts, 3,253 consumer claimants remain deficient in some way. *Id.*, ¶ 17.

c. ***Recognized Claim Amounts.*** Rust estimates the Net Class 1 Consumer Settlement Fund for distribution to be \$3,265,220.75. Coggeshall Decl., ¶ 20. All eligible consumer claims have a Total Recognized Claim amount of \$2,850,473.86. *Id.*, ¶ 18. As such, all eligible Class 1 consumer claimants will receive 114.6% of their recognized claim amount. *Id.*, ¶ 20. Thus, the eligible Class 1 recovery exceeds the estimates provided earlier in support of the rebalancing. Class Counsel believe that is proper to pay these claimants more than their

Total Recognized Claim amounts because the distribution plan approved by the Court provides that no consumer monies are to revert to BMS or be used to satisfy TPP claims. *See* Distribution Plan and Claims Process, Dkt. No. 6349-2 at 3, ¶ 10.

B. Consumer Class 3 Claims Processing

5. The Claims Administrator has calculated the Recognized Claim Amount for eligible consumer Class 3 claimants as follows:

a. ***Eligible Consumer Claims.*** Rust received a total of 109 Class 3 consumer claims in the Settlement, of which 92 were deemed eligible. Coggeshall Decl, ¶¶ 25, 35. These eligible claims have a total Recognized Claim Amount of \$60,683.59. *Id.*, ¶ 35. This figure includes 26 claims that were received after the claim deadline but are otherwise eligible. *Id.* Class Counsel recommend that the Court approve each of the eligible consumer claims, including those that were late.

b. ***Ineligible or Deficient Consumer Claims.*** Rust sent more than 53 letters to Class 3 consumer claimants in an attempt to clarify information provided by the consumer or to request that they take action to resolve a deficient or ineligible condition in their claim. Coggeshall Decl, ¶¶ 27-31. Despite these efforts, 16 consumer claimants remain deficient in some way. *Id.*, ¶ 32.

c. ***Recognized Claim Amounts.*** Rust estimates the Net Class 3 Consumer Settlement Fund for distribution to be \$69,546.56. Coggeshall Decl., ¶ 36. All eligible consumer claims have a Total Recognized Claim amount of \$60,683.59. *Id.*, ¶ 35. Consequently, all eligible consumer claimants will receive 114.6% of their recognized claim amount. *Id.*, ¶ 36.

C. TPP Claims Processing

5. The Claims Administrator has calculated the Recognized Claim Amount for eligible TPP claimants as follows:

a. ***Eligible TPP Claims.*** The Claims Administrator received 646 eligible TPP claims with a total Recognized Claim Amount of \$768,293,633.05. Coggeshall Decl., ¶ 50. This figure includes 20 claims, with a total Recognized Claim Amount of \$1,035,384.02, that were received after the filing deadline but are otherwise eligible. *Id.*, ¶ 51. Class Counsel recommend that the Court approve each of the eligible TPP claims, including the late TPP claims.

b. ***Ineligible or Deficient TPP Claims.*** Rust sent letters to TPP claimants and made phone calls in an attempt to clarify information provided by TPP claimants or to request that they take action to resolve a deficient or ineligible condition in their claim. Coggeshall Decl., ¶¶ 42-48. Despite these efforts, 82 TPP claims remain deficient in some way. *Id.*, ¶ 49.

c. ***Recognized Claim Amounts.*** Pursuant to the Settlement Agreement, if the total amount of claims filed by TPP class members exceeds the amount of settlement proceeds available to distribute to TPP class members, each eligible TPP claimant will share pro-rata in the distributable settlement proceeds. All eligible TPP claims have a total Recognized Claim Amount of \$768,293,633.05. Coggeshall Decl., ¶ 50. This exceeds the amount available for distribution to TPPs which totals approximately \$9,011,082.97 and means each TPP will share proportionately in the remaining settlement proceeds. Rust estimates that each TPP will receive a pro rata share of their claimed amount of 1.17%. There will be no residual funds remaining in the TPP Settlement pool once the TPP distribution is complete.

WHEREFORE, Plaintiffs respectfully request that this Court grant their Motion and order the distribution of funds to eligible consumer and TPP claimants as determined by the Claims Administrator.

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